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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to The Gambia: comments by the State* **

* Reproduced as received.
** The numbering of the paragraphs has been modified to reflect the numbering appearing in the Edited Version of the report A/HRC/39/46/Add.1.

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The Government of the Republic of The Gambia welcomes the Report of the Working Group on Enforced or Involuntary Disappearances. The Government hereby acknowledges with appreciation the Recommendations issued by the Working Group. Please be informed that we have considered the report and wish to concur with the findings of the Working group.

Please find herein responses from the Government on the recommendations issued by the working group entailing the current steps being taken by the Government in ensuring compliance with international standards.

A. Legislation and institutional framework

(a) Expressly introduce a prohibition of enforced disappearance in the Constitution;

This recommendation is accepted as it will form part of the Constitution Review process.

(b) Introduce a specific crime of enforced disappearance in the criminal code punishable by appropriate penalties that take into account its extreme seriousness. The legislation criminalizing enforced disappearance should encompass:

(i). the introduction of the various modes of criminal liability, including in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(ii). the application of command or superior individual criminal responsibility for such crime;

(iii). the express mention that enforced disappearance is a continuous crime to which amnesties or immunities cannot be applied.

This recommendation is accepted as The Gambia has signed the Declaration on Enforced Disappearance and has commenced the ratification process, it is envisaged that upon completion, this will *be* domesticated which will result in its inclusion in the criminal code as an offence with all its necessary components of criminal liability.

(c) Complete the ratification process of the ICPED as soon as possible by depositing the instruments of ratification to the UN Secretary-General and with the express recognition of the competence of the Committee on Enforced Disappearances according to Articles 31 and 32 of the Convention;

This recommendation is accepted. The ratification is ongoing and will be deposited upon completion.

(d) Complete the ratification process of the Convention Against Torture and its Optional Protocol;

This recommendation is accepted. The process is at its completion as we await the signature of The President on the Instrument of Ratification which will then be deposited at the office of the Secretary General of the UN.

(e) Ensure *in legislation and in practice* that deprivation of liberty be carried out only by appropriate law-enforcement agencies;

This recommendation is accepted. It is envisaged that this will be part of the recommendation on law reform.

(f) Create a nation-wide digitalized system of registration of all persons deprived of liberty;

This recommendation is accepted.

(g) Dismantle the Mile 2 Prison and build a new prison in compliance with international standards;

This recommendation is noted. Plans are on the way to reform the prison system.

(h) Complete the reform of the broadly understood security sector, above all of the intelligence services, including a thorough human rights vetting;

This recommendation is accepted and this is ongoing.

(i) Ensure that the newly created National Human Rights Commission complies with the Paris Principles;

This recommendation is accepted. This is the envisaged outcome.

(j) Take measures to strengthen the independence of members of Parliament and their ability to exercise freely their mandate;

This is recommendation is accepted.

(k) Clarify the relevant legal doctrine for domestication of the international human rights treaties in the national legal system and transpose them into the national law;

This recommendation is accepted. As The Gambia is a dualist state, all international treaties have to be ratified by the National Assembly and domesticated into domestic law to be invoked at the national level.

B. Truth

(a) Create a registry for cases of grave human rights violations, including enforced disappearances, committed between 1994 – 2016, taking into account the information gathered by the TRCC;

This recommendation is accepted.

(b) Establish a national DNA databank with samples of relatives of disappeared persons for DNA testing and matching;

This recommendation is accepted but there are challenges of both technical and financial.

(d) Adopt a comprehensive strategy and plan for search, identification, excavation and proper investigation of existing burial sites and identification of new ones;

This recommendation is accepted. It is envisaged that this mechanism will be in place.

(e) Ensure preservation of the sites and the protection of the chain of custody of the samples; reinforce the forensic capacity of the investigators, the prosecutors and the judiciary and ensure that they have adequate resources;

This recommendation is accepted and will be accomplished with the assistance of partners.

(f) Ensure an access to relevant, including confidential, information, in particular to archives, in order to facilitate the localization of undiscovered gravesites, to speed up the search for missing persons, and to clarify cases of enforced disappearances;

This recommendation is accepted.

(g) Develop a gender-sensitive policy and action plan to provide support and rehabilitation for families of forcibly disappeared persons, including specific measures to support families of disappeared persons whose death is confirmed through the truth- seeking processes.

This recommendation is accepted.

84. The Working Group recommends that the TRRC:

(a) Is composed of independent and professional Commissioners of the highest moral authority and with extensive human rights experience based on a full and thorough vetting process;

This recommendation is accepted. Section 4 and 5 of the TRRC Act provides for the appointment of the commissioners. Further, guidelines were issued and published for the selection and appointment of commissioners of the TRRC which is ongoing.

(b) Is provided adequate human and financial resources as well as sufficiently broad powers, including the power to summon current and former officials;

This recommendation is accepted as it is envisaged outcome. Section 27 of the TRRC Act of 2017 provides for the funds of the Commission. Further Section 15 of the TRRC Act which also includes the power to summon officials.

(c) Has the capacity to subpoena information from any source and witness, enter any State institution and have free access to any State archive;

This recommendation is accepted. Further, this is provided for under Section 15 of the TRRC Act, which contains the power to subpoena witness, access any premises or request any information.

(d) Is equipped with the technical capacity, including forensic expertise, to conduct exhumations working in coordination with the law enforcement and prosecutorial authorities;

This recommendation is accepted.

(e) Adopts a victim-centred approach and be fully accessible to the families of disappeared persons. Victims and the public should be kept informed on the functioning of the TRRC as well as on its proceedings;

This recommendation is accepted. The TRRC process indeed puts the victims at the centre of the process.

(f) Ensures the protection of witnesses through the establishment of appropriate witness protection programs;

This recommendation is accepted. Section 34 of the TRRC Act provides for witness protection.

(g) Exclude the possibility to grant amnesties for acts of enforced disappearances;

This recommendation is accepted. The TRRC Act provides that amnesties shall not be available for crimes against humanity.

C. Justice

(a) Carry out all investigations, prosecutions and judicial proceedings in accordance with the principle of due diligence, taking into account the complexity of the enforced disappearances, the context in which they occurred and the patterns that explain why the events occurred, and ensure that there are no omissions in the gathering of evidence or in the development of lines of investigation;

This recommendation is accepted. It is envisaged that once the law prohibiting and criminalized enforced disappearance, the investigation and prosecution of such report cases will be carried out according to the principle of due diligence.

(b) Strengthen the independence and impartiality of the Judiciary, including enhancing the capacity of The Gambian lawyers to adjudicate, through appropriate training and education;

This recommendation is accepted and this is ongoing.

(c) Consider the truth-telling mandate of the TRRC as complementary and not as an alternative to criminal justice, ensure coordination and information sharing between the TRRC and criminal justice system;

This recommendation is accepted.

(d) Ensure that persons who have or are alleged to have committed offences of enforced disappearances do not benefit from any special amnesty law or similar measures that might have the effect of exempting them from criminal liability;

This recommendation is accepted. The Act also provides that amnesty cannot be granted for crimes against humanity.

(e) Take all measures to bring those responsible of enforced disappearances to justice, including by seeking the extradition of those who are currently abroad;

This recommendation is accepted. Upon the recommendation of the TRRC.

(f) Guarantee that criminal investigations of enforced disappearances are conducted, and prosecutions of identified suspects is carried out by a specialized and appropriately trained team of investigators, prosecutors, and forensic experts;

This recommendation is accepted. All reported cases of Enforced disappearance will be investigated and prosecuted by trained investigators and prosecutors. There are challenges as to forensics but the government is making strides to seeking assistance› from partners for assistance.

(g) Guarantee that the authorities in charge of the investigation have the jurisdictional, logistic and scientific resources necessary to collect and process evidence, and notably the power to access all documents and information relevant to the investigation, including on the possible locations of victims remains;

This recommendation is accepted. The Government is facing numerous capacity challenges especially with scientific data. It is envisaged that this will be rectified with the assistance of partners.

(h) Victims should have opportunities to participate in and be heard during the investigative and judicial proceedings — both regarding the clarification of enforced disappearances and the punishment of those responsible — and in seeking fair compensation;

This recommendation is accepted.

(i) Digitalize the judicial system and the prisoners' registry. In accordance with article 10 of the Declaration, an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention.

This recommendation is accepted.

D. Reparations and Memory

(a) Develop, as a matter of urgency, reparations policy considering the specific needs of women and children and make adequate provisions for it;

This recommendation is accepted.

(b) Create a system of professional and victim-oriented psychosocial assistance for the relatives of the disappeared in relation to the physical, mental and economic consequences resulting from the absence of the disappeared, in particular in the context of the transitional justice mechanisms;

This recommendation is accepted.

(c) Establish mechanisms that provide for social allowances

This recommendation is noted.

(d) Provide support for civil society remembrance initiatives, including for their proper maintenance through public funds;

This recommendation is noted.

(e) Consider erecting national and local monuments and establish commemoration days, aimed specifically at remembering disappeared persons;

This recommendation is accepted.

(f) Promote national dialogue through community workshops in the different regions of The Gambia and in schools;

This is accepted and ongoing by both government and its partners including civil society organisations.

(g) Include human rights in educational institutions at all levels, as well as in police and military training centres;

This recommendation is accepted.

87. The Working Group recommends that the international community supports The Gambia in this transition period, notably with the provision of technical assistance, capacity-building and training in all relevant aspects of the transitional justice process.

This recommendation is highly appreciated

88. The Working Group invites the Government of The Gambia to submit within 90 days of the date of the presentation of the present report to the Human Rights Council a timetable showing the steps that it will take to implement the present recommendations.

This is accepted.

The Government of The Gambia wishes to take this opportunity to extend its appreciation to the Working Group and looks forward to the presentation of its Report to the 39th Session of the Human Rights Council in September 2018.